

Richard D. McCune, Esq. State Bar No. 132124
rdm@mwttriallawyers.com
Jae (Eddie) K. Kim, Esq., State Bar No. 236805
jkk@mwttriallawyers.com
MCCUNE & WRIGHT, LLP
2068 Orange Tree Lane, Suite 216
Redlands, California 92374
Telephone: (909) 557-1250
Facsimile: (909) 557-1275

REDACTED VERSION

Mitchell M. Breit, Esq. (Admitted *Pro Hac Vice*)
mbreit@wdklaw.com
WHATLEY DRAKE & KALLAS, LLC
1540 Broadway, 37th Floor
New York, NY 10036
Telephone: (212) 447-7070
Facsimile: (212) 447-7077

Attorneys for Plaintiffs,
VERONICA GUTIERREZ, ERIN WALKER
and WILLIAM SMITH, on behalf of themselves and
all others similarly situated.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERONICA GUTIERREZ, ERIN WALKER and WILLIAM SMITH, as individuals, and on behalf of all others similarly situated, Plaintiffs,
v.
WELLS FARGO & COMPANY; WELLS FARGO BANK, N.A.; and DOES 1 through 125, Defendants. Case No.: C 07-05923 WHA (JCSx)
CLASS ACTION
REDACTED VERSION:
DECLARATION OF RICHARD D. McCUNE IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; EXHIBITS
DATE: August 21, 2008
TIME: 8:00 a.m.
DEPT: Courtroom 9, 19th Floor
Judge Assigned: Hon. William H. Alsup
Complaint Filed: November 21, 2007

I, RICHARD D. McCUNE, declare:

1. I am an attorney licensed to practice law before all of the courts of the State of California and I am a partner of McCune & Wright, LLP, counsel of record for Plaintiffs. The following

1 facts are within my personal knowledge or based on records and files at my law firm, and, if
2 called upon as a witness, I could and would testify competently thereto.

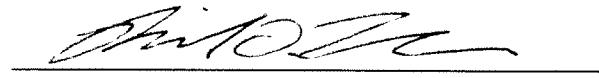
3 2. Plaintiffs cite a number of documents produced by Wells Fargo, responses by Wells Fargo to
4 Plaintiff's requests for discovery, and deposition transcripts of Wells Fargo's employees
5 which Wells Fargo has designated as being "Confidential," "Highly Confidential," or
6 "Confidential – Attorneys' Eyes Only," or the like. These documents are manually filed
7 under seal, or if only portions of the documents have some form of confidential designation,
8 then redacted versions of those documents are filed in the public version of the exhibits and
9 the unredacted versions are manually filed under seal. Likewise, the information set forth
10 from these documents in Plaintiffs' Opposition to Defendant's Motion for Summary
11 Judgment is being redacted from the public version of the pleading.

12 3. **Exhibit 1**, Response Nos. 2, 5 and 7. **[PUBLIC VERSION IS REDACTED.]**
13 4. **Exhibit 2**, Deposition of Julie Gray, taken on May 28, 2008, at pp. 30:18-31:20, 33:9-37:7,
14 39:1-40:25 and 45:10-46:3. **[CONFIDENTIAL DOCUMENT SUBMITTED**
15 **SEPARATELY UNDER SEAL.]**
16 5. In discovery, Wells Fargo produced complaints from over [REDACTED] customers relating
17 to overdraft fees they were assessed. The written complaints for the most part mirror the
18 complaints Plaintiffs are making.
19 6. In taking the depositions of Wells Fargo employees and reviewing the documents produced
20 by Wells Fargo, I was unable to locate any disclosure that stated that a pending charge once
21 listed on the account, can be removed without notice or warning.
22 7. **Exhibit 3**, page 4 (Bates Number GUT000006) under Gold Check Card is a true and correct
23 copy of the Check, Savings & More Brochure.
24 8. Attached hereto as **Exhibit 4** is a true and correct copy of Wells Fargo Online webpage
25 glossary for the definition of "Available Balance."
26 9. Attached hereto as **Exhibit 5** is a true and correct copy of the September 8 through
27 October 5, 2006 statement of Veronica Gutierrez.
28

- 1 10. Attached hereto as **Exhibit 6** is a true and correct copy of the October 6 through
- 2 November 6, 2006 statement of Veronica Gutierrez.
- 3 11. Attached hereto as **Exhibit 7** is a true and correct copy of the June 16 through July 17, 2007
- 4 statement of William Smith.
- 5 12. Attached hereto as **Exhibit 8** is a true and correct copy of the May 24 through June 25, 2007
- 6 statement of Erin Walker.
- 7 13. Attached hereto as **Exhibit 9** is a true and correct copy of the OCC Interpretive Letter #1082.
- 8 14. Attached hereto as **Exhibit 10** is a true and correct copy of the OCC Interpretive Letter #916.
- 9 15. Attached hereto as **Exhibit 11** is a true and correct copy of the OCC Interpretive Letter #997.
- 10 16. Attached hereto as **Exhibit 12** is a true and correct copy of the OCC Advisory Letter,
- 11 AL 2002-3.

12 I so declare the above is true and correct under penalty of perjury under the laws of the United
13 States.

14 Executed on July 30, 2008, at Redlands, California.



15 16 Richard D. McCune
17
18
19
20
21
22
23
24
25
26
27
28